

Message

From: POLITICO Pro Energy [politicoemail@politicopro.com]
Sent: 7/30/2018 9:44:26 AM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: Morning Energy, presented by ExxonMobil: Inside the draft auto rule rollback — LaFleur on the rise amid split FERC — Dems want OGE review of Wheeler meetings

By Alex Guillén | 07/30/2018 05:41 AM EDT

With help from Eric Wolff and Ben Lefebvre

INSIDE THE DRAFT AUTO RULE ROLLBACK: The Trump administration is expected to formally roll back vehicle fuel economy and emissions requirements later this week, and a draft version of the EPA-NHTSA rule posted Friday evening by The New York Times offers up details that confirm the many of the changes previously reported. The draft it promises it will save auto companies and car buyers "half a trillion dollars" by overriding the Obama administration standards while having only a "minimal" effect on climate change and air pollution. Under the frozen standards, the combined car and light truck requirements would be up to 37 miles per gallon and 241 grams of CO₂ per mile. That represents a significant drop from the GHG targets set under Obama. (NHTSA, of course, never set mileage standards for those years, but the mpg goals are also lower than what would have been expected.)

Expect some unease from the auto industry: Carmakers have called on the Trump administration to continue to increase Corporate Average Fuel Efficiency standards and to maintain one national program. The new proposal rejects the first part and sets up a nasty legal battle with California on the second part, meaning potentially years of regulatory uncertainty for an industry already starting to design future cars.

There are caveats: The 700-page draft is undated, and an environmental source told ME it appears to be a month old, so this week's release could be different to the version the NYT published. But as Eric Wolff and Lauren Gardner reported last week, the broad strokes of the proposal appear to be in place. In addition, the draft offers up several other options for public comment besides its preferred alternative.

THE MAJOR TAKEAWAYS: Under the proposal, NHTSA will freeze auto standards for 2021-2026 model years at 2020 levels for several economic, technological and safety reasons. That in turn causes EPA to roll back its own greenhouse gas standards for those years in order to harmonize the two rules. Meanwhile, EPA plans to revoke California's waiver that allows the state to enforce its own higher standards to prevent a confusing market schism, a potentially risky legal move that the Golden State has promised to fight tooth and nail. Some details that caught ME's eye:

Climate change and air pollution: The agencies write that freezing the standards would increase global temperatures by 3/1,000ths of a degree Celsius in 2100 compared to the current rules. It similarly projects an increase in atmospheric CO₂ concentration for that year by 8/10,000ths of a percent, "too small to measure in practice." It also argues that freezing the standards will help improve air quality because consumers are more interested in buying cheaper, less fuel efficient vehicles, and thus would buy more new cars and dump older, dirtier models.

California authority: The proposal dismisses two court rulings from 2007 that said California's rules are not preempted by a law barring states from setting their own fuel economy standards (more on that argument here). The agencies say they "do not agree" with the rulings, and note that NHTSA "was not a party to those cases and is not bound by these decisions." The draft is unusually blunt about this issue: "Eliminating California's

regulation of fuel economy will provide benefits to the American public. ... A consumer buying a pickup truck in Texas or Kentucky should not be on the hook to pay for the heavily subsidized lease of an electric vehicle by a wealthy Californian."

Safety: The previous rule used a "skewed" safety analysis "so as to reduce the projected risk to safety associated with aggressive fuel economy targets," the proposal argues. It projects that freezing the standards "would yield the lowest number of vehicle fatalities" compared to current rules — 12,903 lives over the lifetime of cars made through 2029. This analysis in particular was said to be a sticking point between EPA and NHTSA. Reducing vehicles' weight is one of the more hotly contested contributors to the safety analysis, and the draft cites a NHTSA-contracted study from George Washington University that says lightweighting increases traffic deaths. The auto parts industry hotly disputes that making cars any lighter affects safety, thanks to new materials and technology.

Oil use: The agencies project their proposal will mean U.S. consumption will ultimately increase by 500,000 barrels of oil per day, or about 182 million barrels a year. That increase, the draft says, is "dwarfed by the cost savings" associated with the rest of the proposal.

REMINDER: Acting EPA chief Andrew Wheeler is scheduled to appear before the Senate Environment and Public Works Committee on Wednesday morning. Even if the rule isn't out, nine of the panel's 10 Democrats are from states that follow California's rules.

ALSO COMING THIS WEEK: Wednesday is the deadline EPA set for itself earlier this summer to decide whether to revise the 2015 ozone standard or let it stand. While it was a campaign promise of President Donald Trump to repeal it, signs are pointing toward EPA choosing to keep it instead. Aside from the fact that the agency has now completed the first implementation step, designating which areas fail to meet the standard, and in May then-Administrator Scott Pruitt signed a memo committing EPA to finishing the next review round by the end of 2020, the statutory deadline. Should EPA ultimately back the 2015 rule, expect the long-dormant lawsuits brought by industry groups and some states to heat up again quickly.

WELCOME TO MONDAY! I'm your temporary host, Alex Guillén, filling in for Kelsey Tamborrino. Congratulations to Emily Fisher of the Edison Electric Institute for knowing that the head of the GAO serves a 15-year term. For today: Which is the only state with a border based on a circle? Send your tips, energy gossip and comments to aguillen@politico.com, or follow us on Twitter [@alexsguillen](https://twitter.com/alexsguillen), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICPro](https://twitter.com/POLITICPro).

CHERYL IN CHARGE — LaFLEUR PROFILE ON THE RISE AT SPLIT FERC: Cheryl LaFleur won't be wielding the gavel at FERC anytime soon, but she is about to become the commission's most powerful member, Darius Dixon reports. The impending departure of Republican Robert Powelson will leave FERC evenly split along party lines, potentially throwing a wrench into the agenda for several months or longer until a fifth commissioner is confirmed. "In my personal experience at the FERC, a four-person commission can be very difficult," said former FERC Chairman Jim Hoecker. "Agencies like this are odd numbers for a reason. It's always important for the chairman to develop a workable majority when opinions are divided."

DEMS WANT OGE REVIEW OF WHEELER MEETINGS: House Democrats have asked the Office of Government Ethics to review acting EPA Administrator Andrew Wheeler's meetings with companies that employed him as a lobbyist, Emily Holden reports. Rep. Don Beyer (D-Va.) and several colleagues sent a letter to the independent agency following reporting from E&E News that Wheeler met with at least three former clients in recent months as deputy administrator. The Democrats pointed to Scott Pruitt's resignation "under a cloud of ethical controversy" among the reasons for their concern.

Meanwhile: The ethics team at EPA, which previously had the equivalent of four full-time staffers, is growing. EPA ethics official Justina Fugh said her group has already gained close to one full time equivalent employee and the agency plans to add one more.

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PRUITT SIGHTING: A tipster sent along a pic of Pruitt dining at Il Canale in Georgetown on Saturday evening.

PERRY SIGHTING: Energy Secretary Rick Perry appears at the U.S. Chamber of Commerce Indo-Pacific Business Forum at 12:45 p.m. this afternoon.

MOUNTAIN VALLEY HIGH: Mountain Valley Pipeline is consulting with the Interior Department to see if a court order issued last Friday means it has to stop construction, a spokeswoman tells ME. The U.S. Court of Appeals for the 4th Circuit ruled that Interior's Bureau of Land Management and the Agriculture Department's Forest Service violated environmental laws in approving rights of way through the Jefferson National Forest and other federal lands in Virginia. But MVP holds that the decision "concluded that the Forest Service did not fully explain its rationale on sedimentation impacts and that BLM did not address the impracticality of different alternative routes," company spokeswoman Natalie Cox said in a statement. "MVP is working with the agencies to evaluate the effect of the order on construction activities in the National Forest, which amounts to about 1 percent of the overall project route."

EPA SUPERFUND NOMINEE PUSHED BACK ON TOXIC SITE CLEAN-UP: Ahead of a committee vote this week on Peter Wright's nomination to run EPA's land office, which oversees the massive Superfund program, the New York Times dives into his decades-long history on the clean-up program at Dow Chemicals, which is potentially liable for 14 percent of all U.S. Superfund sites. "[W]hile he led Dow's legal strategy there, the chemical giant was accused by regulators, and in one case a Dow engineer, of submitting disputed data, misrepresenting scientific evidence and delaying cleanup, according to internal documents and court records as well as interviews with more than a dozen people involved in the project."

MORE NOM NEWS — BILL COOPER FOR DOE GENERAL COUNSEL: The president plans to nominate Bill Cooper, director of the law firm McConnell Valdés' Washington office, as the Energy Department's general counsel. Cooper is better known in energy circles as the former director of the House Natural Resources energy subcommittee and as the former head of the trade group the Center for Liquefied Natural Gas. In early 2017, Cooper was rumored to be in the mix to run the White House Council on Environmental Quality.

CAP REPORT CALLS FOR MORE EV INFRASTRUCTURE INVESTMENT: A report out today from the liberal Center for American Progress says the U.S. has significant work to do to boost electric vehicles in order to meet climate goals under the Paris agreement (leaving aside the president's plan to pull out of the deal). The report calls on states to use money from Volkswagen emissions cheating settlements to invest in EV charging infrastructure, and recommends reviving a federal EV tax credit that expired last year.

QUICK HITS

— "Energy company fights to build America's first coal-to-diesel plant," [UPI](#)

— "Pebble mine environmental review continues after Gov. Walker seeks delay," [Anchorage Daily News](#)

— "Pebble mine environmental review continues after Gov. Walker seeks delay," [Anchorage Daily News](#)

— "Massachusetts utilities sign contracts to import Canadian hydropower," [Utility Dive](#)

— "More lion trophy hunting permits granted under Trump administration," [Newsweek](#)

HAPPENING THIS WEEK

MONDAY

8:30 — The U.S. Chamber of Commerce hosts an [Indo-Pacific Business Forum](#), featuring Energy Secretary Rick Perry and others. 1615 H St. NW

11 a.m. — Results for Development hosts a discussion, "[How Climate Change and Natural Disasters Will Transform Economies and Policies](#)." 1111 19th St. NW #700

TUESDAY

9 a.m. — Energy Efficiency for All and the Environmental and Energy Study Institute host a breakfast briefing on "[Federal Programs for Energy and Housing: A Lifeline for America's Low-income Families](#)." Rayburn 2060

2 p.m. — The Environmental Law Institute hosts a webinar on "[Proposed USFWS Endangered Species Act Regulations](#)."

WEDNESDAY

9:45 a.m. — The Senate Environment and Public Works Committee votes on the nominations of Mary Neumayr to run the White House Council on Environmental Quality, Peter Wright to run EPA's Office of Land and Emergency Management and William McIntosh to run EPA's Office of International and Tribal Affairs.

10:30 a.m. — EPW holds a hearing with acting EPA Administrator Andrew Wheeler.

THAT'S ALL FOR ME! Stay frosty, folks.

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<https://subscriber.politicopro.com/newsletters/morning-energy/2018/07/inside-the-draft-auto-rule-rollback-299805>

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Fuel economy rules still on track, despite interagency bickering [Back](#)

By Eric Wolff and Lauren Gardner | 07/27/2018 02:50 PM EDT

A proposed rule to set new fuel economy standards is still on track to be released next week, despite bickering between EPA and the Department of Transportation, sources familiar with the matter tell POLITICO.

EPA had been pushing DOT to bulk up the underlying safety analysis supporting the proposed rule that would recommend freezing fuel economy standards at 2020 levels, a rollback of the Obama-era rule. In EPA's view, a more robust analysis is necessary for the rule to survive the inevitable court challenge, while DOT was pushing to get the rule out quickly. A source quoted in The New York Times, which first reported the tensions, called it "a nuclear war" between top officials at the agencies. But sources say the tension has been largely resolved, and EPA downplayed any disagreements between the agencies.

"These assertions are categorically false," EPA spokesman James Hewitt said in a statement. "Our efforts with DOT have been reflective of a robust and constructive interagency process that the American people expect — and deserve — when agencies are proposing rules of such consequence."

The fuel economy standards may be the Trump administration's biggest rollback of an Obama-era rule, affecting all cars and light trucks for model years 2022 through 2025. The agency is also planning to override California's long-held privilege of setting its own standards, paving the way for an almost certain court battle.

The proposed rule has been under review at the OMB for weeks, but since acting EPA Administrator Andrew Wheeler took over EPA last month, agency officials have adopted a new approach. They began suggesting that the data supporting the argument that lower mileage standards would lead to fewer car deaths was weak and needed additional support, a source familiar with the discussions said. But DOT did not want to delay the rule, and the two sides clashed. The disagreement contributed to a delay of the rollout from this week into next.

But Wheeler and Deputy Transportation Secretary Jeff Rosen spoke earlier this week to work out their differences. The two came to an agreement and now the rule is back on track, a source familiar with discussions said.

An administration official disputed the notion that Wheeler and Rosen were at loggerheads over the rule, saying they're "generally aligned" on the substance of relaxing the standards and that EPA career staff are to blame for trying to slow down the rollout. However, the official acknowledged that Wheeler has a different view on the politics of the proposal than Rosen, with the EPA chief wanting to find some ways to mitigate and navigate the inevitable blowback.

The rule is expected to be published by the end of next week after clearing OMB's Office of Information and Regulatory Affairs on Monday, the official said.

DOT refused to provide a statement on the record.

To view online [click here](#).

[Back](#)

Failed legal argument against California car rules gets second wind under Trump [Back](#)

By Alex Guillén | 05/09/2018 05:00 AM EDT

The Trump administration's plan to stymie California's tough greenhouse gas emissions for cars is about to trigger an epic legal fight — and the White House appears to be planning to use the same strategy that failed to block the state's rules a decade ago.

California's supporters, however, hope any courtroom battles will play out the way they did when the auto industry tried to prevent California and other like-minded states from setting stricter emissions limits than those pushed by EPA: with a pair of resounding legal defeats.

"It's sort of déjà vu because it's going to be basically round two," said Kevin Leske, who was an assistant attorney general in Vermont in 2007 when the state fought off an industry lawsuit seeking to block the greenhouse gas rules for cars.

"Here we are, 10 or 11 years later, basically facing the prospect, it sounds like, of the Trump administration making the same arguments that the auto industry did," added Leske, now a law professor at Barry University in Florida.

If finalized, the move would be one of the biggest regulatory rollbacks of the Trump administration, and it could go even further than what automakers have asked the White House to do. And its advocates say despite the previous legal setbacks, they hope to take the issue to a higher court, something they were denied in the previous battle when a political deal ended the conflict.

In the meantime, California, which has already spearheaded a [lawsuit](#) over EPA's April decision to weaken the standards, is already preparing for a major regulatory break with the Trump administration. The state's Air Resources Board on Monday [asked](#) for public input for regulatory language that it will not consider cars complying with a weakened federal standard to be acceptable in California.

The legal issue will center on the interplay between the long-standing fuel economy standards known as the Corporate Average Fuel Economy, which is issued by the National Highway Traffic Safety Administration under the 1975 Energy Policy and Conservation Act, and the relatively new greenhouse gas emissions standards enforced nationally for the first time under the Obama administration.

In requiring a national CAFE standard, Congress barred states from issuing their own laws or regulations "related to" fuel economy standards. But California's novel approach to regulate carbon dioxide emissions via the state's special authority under the Clean Air Act gave it significant leverage to force car makers to meet stricter rules.

In order to avoid a patchwork of different regulations between California and its allies and the rest country, the Trump administration is expected to seek to nullify the waiver EPA granted California in 2009 allowing it to enforce its own rules. EPA has never tried to revoke a waiver, and legal observers note the law does not explicitly grant EPA such authority.

But the Trump administration is expected to try to circumvent any questions around revoking the waiver by arguing that EPCA preempts California from enforcing its auto emissions standards — essentially the same argument automakers and dealers deployed in multiple lawsuits over a decade ago.

A May 1 [letter](#) from Sen. [Tom Carper](#) to EPA and DOT says the draft proposal would adopt that EPCA preemption argument.

That strategy fell short first time around, when a California judge concluded that greenhouse gas standards are too different from fuel economy regulations to fall under EPCA's "related to" preemption language. Emissions may be closely correlated to fuel efficiency, he ruled, but factors like air conditioning usage and credits for electric vehicles mean that the pollution rules are not explicitly aimed at fuel economy, and thus are not preempted

Meanwhile, a Vermont judge also ruled in 2007 that since EPA had approved the California standard under the Clean Air Act waiver, it becomes a proper government motor vehicle standard, which EPCA requires DOT to

take into account when setting fuel economy targets. Congress "could not have intended that an EPA-approved emissions reduction regulation did not have the force of a federal regulation," the judge wrote.

Those two legal rulings with the span of a few months would seem to be formidable hurdles for any EPCA preemption argument. And the case gets even more difficult for the Trump administration when the Supreme Court's landmark ruling in that year's *Massachusetts v. EPA* is added in. In that case, the majority said that fuel economy and greenhouse gas rules may "overlap," but could both be administered in a way that would "avoid inconsistency."

"I think it's fair to say this ground has been trod before and it's not looking good if Pruitt's EPA trots out this EPCA preemption argument again," said Sara Colangelo, the environmental law and policy program director at Georgetown University.

Congress also passed two major Clean Air Act updates after EPCA, in 1977 and 1990, that expanded California's special powers and didn't address the exemption at all, a move Colangelo said "really signals that they intended California to maintain this special position as the laboratory for advancing pollution controls in the emissions arena."

NHTSA declined to address the preemption issue, but said in a statement that its "top priority" is safety and that the administration "must also consider economic practicability." A spokesman for California's Air Resources Board said that the preemption proposal "would harm people's health, boost greenhouse gas pollution and force drivers to pay more money at the pump for years."

Those two previous court losses are not slowing down conservatives pushing the Trump administration to adopt the preemption argument now.

Undeterred, a coalition of industry groups wrote to EPA Administrator Scott Pruitt in March urging him to revoke California's waiver by concluding it is preempted by EPCA.

"Even though these two lower courts have weighed in, I think there's opportunity now for the lawsuits to move on to a higher level," Patrick Hedger, the policy director for the FreedomWorks Foundation, a conservative advocacy group.

He added that no higher court ultimately addressed the issue. Appeals in both cases were dropped as part of the single national standard deal reached between the Obama administration, California and automakers. Hedger noted that the Supreme Court's *Massachusetts v. EPA* ruling was not specifically about EPCA preemption.

Marlo Lewis, a senior fellow at the Competitive Enterprise Institute, believes the best way to win the preemption argument is to focus on the high degree of overlap to show the two standards are "related" under EPCA.

"You and your dad are different people. Are you not related?" Lewis said. "The idea that they're not related because they're not identical is just pure rhetorical flimflam."

Like many other deregulatory actions, this proposal would substantially benefit the energy-producing that voted for Trump.

For conservatives, blocking California's climate change authority is the ultimate goal, since the Democratic hold on state politics and California's size mean its aggressive action on climate change has an outsize influence on the rest of the nation.

"I think this is one step in basically saying, 'Look, we're not going to allow California on this issue or any others in the future to continue to supersede federal policy on these issues and basically impose their standards on the entire country just because of the size of the market,'" said Hedger.

Halting fuel economy standards at 2020 levels would mean needing roughly 2 billion barrels more oil over the lifetime of cars built from 2021 to 2026, said David Cooke, a senior vehicles analyst at the Union of Concerned Scientists. And that's not counting the longer-term demands that would be caused for future model years that would start with lower targets because of this potential freeze.

To view online [click here](#).

[Back](#)

Pruitt changes NAAQS review to consider 'adverse' effects of standards [Back](#)

By Alex Guillén | 05/10/2018 10:13 AM EDT

EPA Administrator Scott Pruitt today directed the agency to change the review process for a critical air quality program to include the potential "adverse" effects of tighter standards.

In a [memo](#) signed Wednesday, Pruitt directed the Clean Air Scientific Advisory Committee, which advises on National Ambient Air Quality Standards issues, to provide advice on background pollution concentrations and the "adverse public health, welfare, social, economic or energy effects" from setting and achieving NAAQS standards.

The Supreme Court has previously ruled that EPA cannot consider implementation costs when setting NAAQS standards. Pruitt's memo argues that such information, even if not used to set a standard, can provide "important policy context for the public, co-regulators and EPA."

Pruitt also committed EPA to finish reviews of two controversial standards before the end of President Donald Trump's first term.

Even as EPA continues internal deliberations over revising the 2015 ozone standard, Pruitt committed the agency to meeting the October 2020 deadline to again review the standard. He also directed EPA to complete its review of the particulate matter standard by December 2020.

The memo also:

- Calls for "more efficient ways" to conduct the scientific and policy assessments that underlie NAAQS reviews;
- Requests a "clearer distinction" between the scientific conclusions and the "wider range of policy concerns" that Pruitt considers in setting standards;
- Urges CASAC members who disagree with the panel's consensus to "share their own individual opinions;" and
- Advises EPA to issue implementation rules and guidance concurrent with NAAQS revisions.

WHAT'S NEXT: The memo directs EPA to begin work on the next ozone review in order to complete it by October 2020.

To view online [click here](#).

[Back](#)

With FERC split, LaFleur's profile set to rise [Back](#)

By Darius Dixon | 07/30/2018 05:01 AM EDT

Cheryl LaFleur won't be wielding the gavel at FERC anytime soon, but she is about to become the commission's most powerful member.

The impending departure of Republican Robert Powelson will leave FERC evenly split along party lines, potentially throwing a wrench into an agenda for several months or longer until a fifth commissioner is confirmed.

"In my personal experience at the FERC, a four-person commission can be very difficult," said former FERC Chairman Jim Hoecker. "Agencies like this are odd numbers for a reason. It's always important for the chairman to develop a workable majority when opinions are divided."

Tyson Slocum, a longtime FERC watcher who directs Public Citizen's energy program, said LaFleur "has conditioned herself as sort of a swing vote" on the commission.

While LaFleur has split with Republicans on key issues like climate change, she is seen as the more moderate of FERC's pair of Democratic commissioners. That may give her an opportunity to shape new rules in the country's largest power market, and it could force greater consideration of greenhouse gas emissions before new pipelines are approved. But the split commission also may be less likely to undertake more contentious work such as any major overhaul of the agency's natural gas policy.

"We'll have to work harder to come to consensus on things — some of these hotly debated items," LaFleur said at the POLITICO Pro Summit in Washington earlier this month. "In order to get out orders, we'll have to find three people who vote together, and I'm happy to be part of that majority and try to influence the orders."

FERC Chairman Kevin McIntyre sets the agency's agenda, but he can't do much without a majority of commissioners on his side. When decision-making gets contentious, Hoecker said, the chairman may have to negotiate hard to get something voted out and, at the same time, avoid any resentments that might hold up the flow of routine business.

LaFleur laughed off a comparison to recently retired Supreme Court Justice Anthony Kennedy, a perennial swing vote, but she didn't dispute his influence.

"I've been at FERC so long that when I first got to FERC, someone told me I was the Sandra Day O'Connor," she said. "Now, a whole new generation of Supreme Court justices has come and gone and I'm still there."

While President Donald Trump will be able to pick a Republican to replace Powelson, a new commissioner may not be in place until sometime next year, after the Supreme Court fight and midterm elections expected to dominate the fall agenda in Washington. Formal vetting does not appear to have started, according to industry

sources and other FERC watchers, but potential commissioners include Bruce Walker, the Energy Department's top electricity policy official; Sean Cunningham, a DOE official who used to direct the agency's policy office; and Doug Little, a former Arizona regulator who joined DOE's external affairs office last fall.

Senate Energy and Natural Resources Chairwoman Lisa Murkowski (R-Alaska), who recently boasted about having a fully stocked FERC, said she's eager to make sure there are enough commissioners to keep agency business flowing, particularly after last year's six-month stretch without a quorum and the project backlog that created.

"I'm going to kinda put a fire on this. We worked very aggressively to get the FERC filled out, and I guess we'll just do it again," Murkowski told reporters earlier this month.

While FERC can still conduct business with four commissioners, its agenda will be more complicated for a while.

The divide will be felt within a few weeks on a controversial FERC order directing the PJM grid operator to write new rules for its capacity market aimed at protecting power markets from state-level support for nuclear and renewable power. PJM, the largest power market in the U.S., manages the grid spanning 13 states and the District of Columbia, from Illinois to New Jersey.

In June, Powelson delivered the tie-breaking vote on the order directing PJM to find a way to prevent subsidized power plants from undercutting competing sources such as coal.

LaFleur offered a more moderate dissent than her fellow Democratic Commissioner Richard Glick, who questioned the need for FERC to step in at all. While she acknowledged FERC may need to act, she was skeptical of the order's novel application of a mechanism known as a "Fixed Resource Requirement," a move that has sparked confusion across the industry.

"I do not share the majority's confidence that this proposal is the obvious solution to the challenge before us, in no small part because it is not clear to me how this construct will actually work," LaFleur wrote in her dissent. The majority, she said, had signaled their intent to adopt "the most sweeping changes to the PJM capacity construct since the market's inception more than a decade ago."

Now, it will be up to PJM to try to convince her.

The grid operator must submit a new plan by late August that meets the set of technical criteria laid out in FERC's order. PJM hopes to have the rules in place for its next capacity auction in the spring of 2019, and that will mean getting FERC's sign-off by January, before another commissioner is likely to be in place.

PJM would be smart to "to design a proposal that's going to at least get LaFleur's vote," because Glick isn't anywhere close to the Republicans on the issue, said Rob Gramlich, a consultant for renewable energy and storage companies who used to work for former FERC Chairman Pat Wood.

"All the RTOs and all the regulated utilities to some extent think about that. It's true on rates, and return on equity as well," Gramlich added. "Where the commissioners are is usually pretty well-known, and you don't want to file something that's going to be incompatible with commissioners' past positions."

LaFleur's position as FERC's swing vote will also be felt in the commission's reviews of pipelines and related natural gas infrastructure.

While LaFleur has generally voted to approve such applications, she has recently pushed her fellow commissioners to more seriously consider climate change in their reviews. She has cited as a motivation for that shift the August 2017 D.C. Circuit Court of Appeals decision that directed FERC to estimate how much carbon would be generated by natural gas power plants because of deliveries expected from the Sabal Trail pipeline and related projects in the Southeast.

But in the wake of the Sabal Trail ruling, LaFleur described doing a basic back-of-envelope emissions calculation she felt the agency should be doing — something McIntyre may have to consider if he wants LaFleur's vote. Even in some concurrences where she supported projects, LaFleur has pressed FERC to take climate change more seriously.

"I'm working to try to make a case-by-case public interest determine in each pipeline application or petition for rehearing based on the facts in the record and the governing law as I understand it," LaFleur said at FERC's July open meeting, explaining what she looks for before supporting pipelines.

LaFleur's position changed quickly enough that Republican FERC Commissioner Neil Chatterjee jokingly jabbed at her when talking about how he first met Powelson in the early 2010s.

"That was a lifetime ago," Chatterjee said at the meeting this month. "Cheryl used to vote for pipelines back then with no regard whatsoever for emissions."

Fewer than a half-dozen pipeline projects are slated to need leadership approval over the next several months, but sorting out how the policy divide is bridged in this four-member commission falls to McIntyre. Among them are Cheniere's Midcontinent Supply Header Interstate Pipeline, running 200 miles from central Oklahoma to the Texas border, that the developer had hoped to have in service by early 2019.

McIntyre has also launched an open-ended, loosely defined review to take a "fresh look" at the agency's gas infrastructure policy, which has not been updated since the Clinton administration. The policy outlines FERC's philosophy on how to assess the "need" for a project by weighing its environmental costs with market demand and other factors, and the ongoing review has turned into another front in the battle over climate change.

In comments submitted to FERC last week, environmental organizations like the Environmental Defense Fund say FERC needs to reassess how it prevents overbuilding the nation's pipeline network, and a slew of other green groups also argue that more greenhouse gas emissions data need to be disclosed. The Harvard Electricity Law Initiative suggests that FERC "explicitly acknowledge" the economic risks and environmental effects of greenhouse gas emissions. On the other hand, industry groups like the American Gas Association are asking regulators to keep their hands off the policy.

Now it's unclear how the initiative continues in Powelson's absence, whether McIntyre tries to make concessions to LaFleur to win her support for a new policy, or if he waits until a new commissioner is in place before proceeding further.

Public Citizen's Slocum said that while the commission may find a middle ground on some issues, he did not expect the agency to craft any notable new policies on gas infrastructure with its current makeup.

"FERC isn't gripped with the kind of partisan atmosphere of distrust that you see in Congress," he said. "But that doesn't mean that they're going to be able to work out their differences."

To view online [click here](#).

[Back](#)

House Democrats call for investigation of Wheeler meetings with former clients [Back](#)

By Emily Holden | 07/27/2018 05:46 PM EDT

House Democrats are asking the Office of Government Ethics to review acting EPA Administrator Andrew Wheeler's meetings with companies that employed him as a lobbyist.

Rep. [Don Beyer](#) (D-Va.) and several colleagues sent a [letter](#) to the independent agency today following [reporting](#) from E&E News that Wheeler met with at least three former clients in recent months as deputy administrator. They pointed to previous Administrator Scott Pruitt's resignation "under a cloud of ethical controversy" among the reasons for their concern.

"That context, Wheeler's past work as a coal lobbyist, and the many conflicts of interest which that work naturally presents to his leadership of the EPA demand that his meetings and communications be carefully scrutinized so that he is held to the highest ethical standard," wrote Beyer and Reps. [Raja Krishnamoorthi](#) (D-Ill.), [Pramila Jayapal](#) (D-Wash.), and [Jamie Raskin](#) (D-Md.).

EPA ethics reviews essentially operate on the honor system to ensure Wheeler is abiding by the Trump administration's pledge to avoid dealing with companies for whom he lobbied within the previous two years.

"We rely on the disclosures of an individual," ethics official Justina Fugh told POLITICO.

But public forms list Wheeler as a lobbyist for former clients less than two years before he was sworn in as deputy administrator on April 20. For example, Wheeler's former firm, Faegre Baker Daniels, did not disclose that it stopped lobbying for Darling Ingredients until May 31, 2016.

Fugh said Darling was not on a list Wheeler had submitted of lobbying clients in the prior two years. She said he also can meet with past clients that are subject to the pledge in certain group settings.

WHAT'S NEXT: The Democrats asked OGE to determine whether Wheeler had violated his pledge and to clarify its terms.

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[Back](#)

Court rejects BLM, Forest Service approval of Mountain Valley pipeline [Back](#)

By Alex Guillén | 07/27/2018 03:19 PM EDT

A federal appeals court today threw a major wrench into a controversial gas pipeline approved by the Trump administration.

The 4th U.S. Circuit Court of Appeals [ruled](#) that the Interior and Agriculture departments violated environmental laws in approving rights of way through federal lands for the Mountain Valley Pipeline, which would carry gas through the Jefferson National Forest and other federal lands in Virginia.

"American citizens understandably place their trust in the Forest Service to protect and preserve this country's forests, and they deserve more than silent acquiescence to a pipeline company's justification for upending large swaths of national forestlands," the three-judge panel wrote. "Citizens also trust in the Bureau of Land Management to prevent undue degradation to public lands."

BLM and the Forest Service each gave their approvals for the pipeline in December. But each agency fell short, the court concluded.

The Forest Service failed to independently review the company's sedimentation analysis and did not even try to explain how its "grave concerns" regarding erosion had been satisfied by the company, violating NEPA, the court said. The Forest Service also violated certain requirements under the National Forest Management Act, the court said.

The court also dinged BLM for violating the Mineral Leasing Act by granting a 3.6-mile right of way across federal lands without first trying to locate the route through existing rights of way.

Mountain Valley did not immediately return questions today about whether construction on the pipeline would have to stop.

WHAT'S NEXT: The court vacated both approvals and sent the matter back to the agencies to address. The pipeline may still be able to re-secure the approvals if the agencies fix the errors described by the court, but that could require months of environmental studies and public comment, another setback for the pipeline.

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[Back](#)

Sources: White House considering natural gas official to lead CEQ [Back](#)

By Andrew Restuccia | 03/13/2017 08:40 PM EDT

The Trump administration is considering Bill Cooper, the long-time president of a natural gas industry trade association, to lead the White House Council on Environmental Quality, two people familiar with the matter told POLITICO.

Cooper served as president of the [Center for Liquefied Natural Gas](#) for nearly a decade, according to his LinkedIn [profile](#). The group advocates for expanded use of liquefied natural gas and counts a number of major fossil fuel companies among its [members](#), including BP, Exxon Mobil, Chevron and Shell.

Since 2015, Cooper has been the staff director on the House Natural Resources Committee's Energy and Mineral Resources Subcommittee.

Sources said Cooper is among several candidates who are being considered to lead CEQ, the White House's in-house environmental policy shop. CEQ will play a central role in coordinating environmental policy across federal agencies.

Kathleen Hartnett White, a former Texas environmental regulator who now works at the conservative think tank Texas Public Policy Foundation, is also under consideration to lead CEQ. White is a vocal skeptic of mainstream climate science.

Rebecca Rosen, an executive at oil and natural gas producer Devon Energy, had been seen as a leading contender for the job. But she withdrew from consideration for the post last week, citing family obligations.

A White House spokeswoman did not comment, saying she had no staffing news to announce. Cooper did not respond to a request for comment.

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[Back](#)

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